

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

(N.) has a substantial hearing impairment. He cannot relate to everyday activities comparable to that of a child his age. He needs constant assistance and guidance when he goes outdoors for instance to play or goes for a brief walk. He needs to be monitored 100% of the time when he is awake so that he does not take it upon himself to walk out into the road for instance, where he could never hear an oncoming car. (N.) has

been working with a "hearing impaired" puppy so that he can be "warned" by the dog if she should get himself into a dangerous situation. (N.) cannot hear the phone. He has two hearing aids which need constant adjustment as he grows. It is plain to see that this child's hearing is getting more serious and that his primary care giver (his mother) has to be "on guard" whenever he is around. He appears to be able to hear less and less as he ages. There is a special light/alarm system on the telephone so that (N.) can see it when it goes off and knows that someone is calling.

(N.) has learning disabilities in school also, due to his hearing loss. He learns a lot slower than others his age and has a hard time comprehending what is being said. Because of his hearing disability; he can become extremely frustrated. This child in (sic) on an I.E.P. at school; he is a very special child with very special needs and I feel it is important to be sensitive to them by allowing the (sic) (N.) some time to "breathe" and enjoy some of the important things in life, like fun and getting together with other people in a variety of circumstances and enjoying his community.

Yes, we did ask for the maximum number of hours so that he and his mom could get some respite from each other. (N.) needs to learn to be around others in various environments, doing community activities and such but (N.) has to be supervised 100% of the time when he is up and about. If there were a dangerous situation, for instance fire, (N.) would need much more supervision getting out of the house than that of a child his own age. We would like to have at least 5-10 hours per week for this child to get out and have some activity outside the home, even if we are not given the maximum number of hours.

2. The Department has denied the petitioner's application for personal care services for her son because he has not demonstrated that he requires assistance to perform activities of daily living.

ORDER

The Department's decision is affirmed.

REASONS

The Medicaid regulations regarding Personal Care Services are reproduced below.

7406 Personal Care Services (10/01/1995, 95-27F)

Personal care services are services related to a recipient's physical requirements, such as assistance with eating, bathing, dressing, personal hygiene, activities of daily living, bladder and bowel requirements, and taking medications. Services are provided to enable a recipient to remain in his or her home/community, maintain their current health status and prevent, delay, or minimize deterioration of their condition. Personal care services are intended to supplement care provided by a recipient's family or primary caregiver, not replace it. Services may be provided in the home or in settings outside the home, when necessary.

7406.1 Eligibility for Care (10/01/1995, 95-27F)

Coverage for personal care services is available only to categorically needy and medically needy Medicaid/ Dr Dynasaur recipients under age 21, pursuant to 1905 (r) (5) of the Social Security Act, when such services are medically necessary and cost effective as defined in these rules under rule 7406.6. Personal care services are not covered for recipients age 21 or older.

7406.2 Covered Services (10/01/1995, 95-27F)

Covered personal care services include:

- Assistance with bathing, dressing and grooming;
- Assistance with bladder or bowel requirements;

- Assistance with medications which are ordinarily self-administered;
- Assistance with eating, drinking and diet activities, to include the preparation of meals when necessary;
- Assistance in monitoring vital signs;
- Routine skin care;
- Assistance with positioning, lifting, transferring, ambulation and exercise;
- Assistance in the use of adaptive equipment; recipient's comfort and health and incidental to the medical care of the recipient;
- Limited housekeeping services essential to a
- Accompanying the recipient to clinics, physician office visits, or other trips which are medically necessary;
- Continuation of training programs to increase or maintain recipient independence, physical and/or cognitive functioning, cognitive and emotional well-being, and to promote health and safety.

It is clear from the petitioner's request that her son primarily needs supervision, respite services, and increased opportunities for socialization. Unfortunately, such needs do not fall within the parameters of personal care services, as defined above.¹ Inasmuch as the Department's decision is

¹ It certainly appears that the services the petitioner is seeking should be included in her son's IEP as essential educational and vocational services under special education. If she has not already done so, the petitioner should request her son's school that these services be included in her son's IEP. The petitioner is advised that she has due process appeal rights under special education, and that she can contact the Vermont Department of Education for information and attorney referrals if she cannot resolve the matter through her son's school.

in accord with the regulations the Board is bound to affirm.

3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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